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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1509 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NANASAHEB BHIKHAJI RAO

Versus

RAMBHAO ARJUN

Appearance:

MR BHARAT J SHELAT for Petitioner

MR SN SHELAT for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 02/03/2001

ORAL JUDGEMENT

#. List has been revised twice, none appeared for the respondents. As such, Shri BJ Shelat, learned counsel

for the revisionist has been heard and the judgments of the courts below have been examined.

#. The revisionist, landlord filed a suit for eviction of the tenant-in-chief, respondent no.1 and also the sub-tenants, respondent nos.2 and 3 on various grounds. The first ground was that, the tenant was in arrears of rent exceeding six months. The second ground was that, the respondent no.1, tenant had illegally sub-let the suit land to the respondent nos.2 and 3 without his consent in writing. The third ground was that, the land in suit was reasonably and bonafidely required by the landlord, revisionist for his personal use. The next ground was that, the sub-tenants, respondent nos.2 and 3 were creating nuisance on the suit land. Another ground was that, the tenant-in-chief, as well as, the sub-tenants are using the suit land for purpose which is contrary to the terms of contract between the tenant and the landlord contained in the rent note and there has been change of user of the suit land.

#. The suit was resisted by the tenant-in-chief, respondent no.1, denying that the rate of rent at Rs.23=00 per month is the standard rent. According to him, Rs.20=00 per month, which was the previous agreed rent should be the standard rent. The tenant-in-chief, denied that the suit land is reasonably and bonafidely required by the landlord for his personal use. Allegation of nuisance was also denied by him. He, however, admitted that the super-structure alongwith the suit land was let out by him to the defendant nos.2 and 3, who are doing business in the super-structure and that these defendants did not pay any rent to the defendant no.1.

#. The suit was also resisted by the sub-tenants, defendant nos.2 and 3, who are respondent nos.2 and 3 in this revision. Their case was that, the defendant no.1 is tenant of the suit land and that he had constructed super-structure thereon, which was let out to the defendant no.2. In this way, allegation of illegal sub-letting has been denied by these defendants. They have contested the suit on other grounds adopting the stand of the defendant, respondent no.1.

#. The trial Court negatived all the contentions raised by the landlord, revisionist and accepted the defence version setup by the defendants, respondents. As such, the suit was dismissed.

#. An appeal was preferred by the plaintiff,

landlord, which was also dismissed. It is, therefore, this revision.

#. Shri BJ Shelat, learned counsel for the revisionist has not challenged the findings of the two courts below that the suit land is not reasonably and bonafidely required by the landlord for his personal use. Likewise, he has not challenged the concurrent findings of the courts below regarding causing nuisance over the suit land. Since the tenant-in-chief paid the arrears of rent after receipt of notice in court, Shri Shelat did not press eviction on this ground in this revision.

#. He has, however, assailed the concurrent findings of the two courts below on two counts. Firstly, he has argued that the finding that illegal sub-letting is not established, is perverse and contrary to law and is also based on ignoring the admission of the tenant-in-chief and is further based on inference of collusion between the tenant-in-chief and the sub-tenants without material on record. Thus, on the grounds of perversity and illegality in this finding, the learned counsel for the revisionist has contended that decree for eviction should have been passed by the two courts below.

#. The second contention has been that, in any event, decree for eviction should have been passed by the courts below on the ground of change of user of the suit land.

##. It is a case of concurrent findings recorded by the two courts below. However, if the revisional Court finds that the concurrent findings are perverse and contrary to law, inference in revision will be justified. A finding is said to be perverse when it is based on surmises and conjectures and has been returned ignoring admission made by the tenant-in-chief. Needless to say, that admission is best piece of evidence against the maker unless the maker explains that it is incorrect or it was made by him without understanding the impact of such admission. No such explanation has been put forward by the tenant-in-chief that he made incorrect admission in the written statement that he had sublet the open land, so also the super-structure to the defendant nos.2 and 3 under some mistake or confusion.

##. Since, no explanation has been put forward by the tenant-in-chief, unnecessary inference that it was made in collusion with the landlord, can not be sustained. There is no material on record to justify inference that this admission was made by the tenant-in-chief in his written statement under some collusion with the landlord.

Needless to say, that if such admission would have been made in collusion with the landlord, the tenant-in-chief himself would have invited evil consequences of such admissions and he too would have rendered himself liable for eviction from the open land in dispute. It is not in dispute that only the open land was let out by the plaintiff and the defendant no.1 raised super-structure for carrying on wood business over the open land with the permission of the landlord. Consequently, super-structure will be owned by the tenant-in-chief.

##. The lower appellate Court, in its judgment, has clearly mentioned admission of the defendant no.1 in his written statement that, he had let-out the super-structure alongwith the suit land to the defendant nos.2 and 3, who are doing business in the said super-structure. There is further admission in his written statement that the defendant nos.2 and 3 never paid any rent to the defendant no.1. This admission can not be construed in the sense that sub-letting was gratuitous. On the other hand, the allegation is that the land in suit, as well as, the super-structure were sub-let to the defendant nos.2 and 3 but, they did not pay rent to the defendant no.1. It is for this reason that the defendant no.1 was compelled to file a suit for eviction against the defendant nos.2 and 3. In this background, it is clear from the admission of the defendant no.1 that the defendant nos.2 and 3 are in exclusive possession of the land in suit, as well as, the super-structure raised by the defendant no.1 over the said land and that these defendants are carrying on business in scrap and not business of sale of wood. If, exclusive possession of the defendant nos.2 and 3 is made out from the admission of the tenant-in-chief then the landlord was not required to establish this first condition of sub-letting. His mere statement on the point was enough to strengthen his case.

##. The second ingredient for sub-letting is that, transfer of exclusive possession was for valuable consideration. On this point also, there is admission in the written statement of the defendant no.1 that the defendant nos.2 and 3 did not pay any rent to him. Consequently, it can be said that sub-letting was for valuable consideration. The defendant no.1 has filed suit for eviction of the sub-tenants. In view of aforesaid discussion, both the ingredients of sub-letting, namely, transfer of exclusive possession and transfer of possession for valuable consideration are established. There was then no reason for the courts below to drawn any inference of collusion to explain the admission of

the defendant no.1, for which there was no material on record. It is, in this background that the judgments of the two courts below can be said to be perverse.

##. The lower appellate Court has tried to support the judgment of the trial Court on the strength of Supreme Court's verdict in MRS.DOSSIBAI v. KHEMCHAND AIR 1966 S.C. 1939 and also from a pronouncement of the Karnataka High Court VAZAYIL MOHAMMED v. SRIDHAR PURANIKA 1977 ALL INDIA RENT CONTROL JOURNAL(1) 875. The Karnataka High Court has followed the judgment of the Apex Court in Mrs. Dossibai's case (Supra). The Apex Court, in this case, approving the judgment of the Bombay High Court in VINAYAK GOPAL v. LAXMAN KASHINATH ILR 1956 BOMBAY 827 = AIR 1957 BOMBAY 1994 held that the bar of sec.15 will operate only in the way of letting out the land of which the lease has been taken, but will not stand in the way of letting the building constructed on the land. However, in my view, the Apex Court's verdict, as well as, the judgment of Karnataka High Court, so also the judgment of the Bombay High Court are distinguishable on facts. The facts in Vinayak Gopal's case (Supra) before the Bombay High Court were that the lands were let out for construction of the building for residence. On these facts, it was held that the land was let for residence within the meaning of sec.6 of the Rent Act. The Apex Court also on these facts held that, as already indicated, the words "let for residence" on a proper construction would cover the case of open land being let for construction of residential building and so the conclusion reached by the Bombay High Court is correct. In the case before me, only the open land was let out and there was no covenant between the landlord and the tenant, defendant no.1 that the letting was for raising any super-structure for the purposes of residence. Only open land was let out for sale of wood, namely, for business purposes, and if, for that purpose, some super-structure was raised by the tenant-in-chief for supervising the sale transaction, it can not be said that the land was let out for the purposes of residence. Thus, in my opinion, the findings of the two courts below that the landlord failed to established illegal subletting, are not only perverse but, are also contrary to law.

##. The second contention of Shri Shelat has also to be accepted that the tenant-in-chief is guilty of change of user of the demised land. He has placed reliance upon sec.13(1)(a) of the Bombay Rent Act, which provides that, subject to the provisions of sec.15, a landlord shall be entitled to recover possession of any premises if the

Court is satisfied that the tenant has committed any act contrary to the provisions of clause-(o) of sec.108 of the Transfer of Property Act, 1882.

##. Sec.108(o) of the Transfer of Property Act reads as under :

"The lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his own; but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell or sell timber, pull down or damage buildings belonging to the lessor, or work mines or quarries not open when the lease was granted, or commit any other act which is destructive or permanently injurious thereto."

From plain reading of sec.108(o) of the Transfer of Property Act it becomes abundantly clear that the lessee can use the property let out to him as a person of ordinary prudence but, he must not use or permit another to use the property for a purpose other than that for which it was leased. The purpose for which the land was leased was indicated in the rent note, whose execution was not denied by the defendant no.1, the tenant-in-chief. In para-25 of the judgment, the lower appellate Court has mentioned that there is a condition in the rent note that the defendant no.1 has only to do wood business in the suit premises and he has not to do any other business in the suit land. There was thus, clear stipulation in the rent note that the land was to be used only for carrying on wood business and for no other business. The lower appellate Court was again in error in holding that such covenant in the rent note can not be enforced. It was not a general covenant that the tenant-in-chief was permitted to carry on business. If the land was let out for carrying on business then certainly, the landlord could not have compelled the tenant to carry on only one business over the land in suit. But, here in this case, the rent note was specific and is restricted to the using of the demised land only for sale of wood and for no other purpose. Obviously, by sub-letting the premises to the defendant nos.2 and 3, the tenant-in-chief has committed breach of terms of tenancy contained in the rent note. He has also committed breach of terms of tenancy, prohibiting the tenant-in-chief from sub-letting the land in suit. Thus, the tenant-in-chief has not only given up his business of selling wood but has allowed the sub-tenants to carry on business in scrap. This is again in violation of the provisions of sec.108(o) of the Transfer of Property Act,

which interalia prohibits the tenant not to use or permit another to use the property for a purpose other than that for which it was let out. Here, in the instant case, the defendant no.1 had permitted the defendant nos.2 and 3 to use the demised land and super-structure for carrying on business other than that for which the land was let out to him. In this case, thus on this ground also the landlord was entitled to decree for eviction.

##. The decree for eviction also could have been passed against the defendant no.1 for committing breach of terms of tenancy, namely in not observing the terms of the rent note mentioned above. Thus, the decree for eviction should have been passed by the two courts below against the defendant no.1, and since the defendant nos.2 and 3 are illegal sub-tenants, they have also to go alongwith the tenant-in-chief. As such, decree for eviction should have been passed against all the three defendants.

##. In the result, the revision succeeds and is hereby allowed. The judgments and decrees of the two courts below are set-aside. The suit of the plaintiff, revisionist for eviction of the defendants, respondents from the suit land is hereby decreed. The defendants shall hand-over vacant possession of the suit land to the revisionist within a period of thirty days from today.

##. Shri Shelat states that the rent has been received, hence no decree be passed regarding arrears of rent. On the facts and circumstances of the case and since none has appeared to contest this revision, there shall not be any order of cost.

March 2, 2001. [D.C. Srivastava, J.]
/sakkaf